

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO
GENERAL DIVISION

ELIZABETH SCHOTTLE, as Executor
of the Estate of
JANET RUTH KAVANAUGH
3280 Harrisburg Georgesville Road
Grove City, Ohio 43123

Plaintiff,

vs.

MOUNT CARMEL HEALTH SYSTEM
D/B/A MOUNT CARMEL WEST
c/o CT Corporation System, Agent
4400 Easton Commons Way, Suite 125
Columbus, Ohio 43219

and

WILLIAM S. HUSEL, D.O.
4757 Aberdeen Avenue
Dublin, Ohio 43016

and

TALON SCHROYER, RPH
1017 Creekview Drive
Marysville, Ohio 43040

and

TYLER RUDMAN, RN
5126 Thornhill Court
Grove City, Ohio 43123

Defendants.

Case No: 19-CV-_____

Judge _____

Jury Demand Endorsed Hereon

COMPLAINT

FACTS AND JURISDICTION

1. Pursuant to R.C. 2305.21, Plaintiff Elizabeth Schottle brings this action as the duly appointed Executor of the Estate of Janet Ruth Kavanaugh for the exclusive benefit of the next of kin.

2. Defendant Mount Carmel Health System ("Mount Carmel") is an Ohio corporation, doing business as Mount Carmel West, which is located in Columbus, Franklin County, Ohio. Mount Carmel provides treatment, by and through its actual and ostensible agents and employees, to those in need of medical care.

3. Defendant William S. Husel, D.O. ("Defendant Husel"), with offices in Franklin County, Ohio, is duly licensed to practice osteopathic medicine by and in the State of Ohio. At all times relevant, Defendant Husel provided treatment for consideration to those in need of medical care as an employee and/or agent of Mount Carmel.

4. Defendant Talon Schroyer, RPh ("Defendant Schroyer") is a resident of Marysville, Union County, Ohio who is a registered pharmacist by and in the State of Ohio. At all times relevant, Defendant Schroyer was a pharmacist providing pharmacy services as an employee and/or agent of Mount Carmel.

5. Defendant Tyler Rudman, RN ("Defendant Rudman") is a resident of Grove City, Franklin County, Ohio who is a registered nurse by and in the State of

Ohio. At all times relevant, Defendant Rudman provided nursing care and services to patients as an employee and/or agent of Mount Carmel.

6. Defendants, individually or by and through agents and/or employees, were involved in medical care and treatment of Janet Kavanaugh in December of 2017, while she was a patient at Mount Carmel.

7. On or about March 12, 2018, Plaintiff obtained medical records from Mount Carmel relating to Janet Kavanaugh's treatment, and ultimate death, at Mount Carmel.

8. Review of the Mount Carmel medical records reveals that Janet Kavanaugh was prescribed, and administered, a lethal dose of the drug Fentanyl on December 11, 2017.

9. Defendant Husel ordered that 1,000 micrograms of Fentanyl be given to Janet Kavanaugh, through her IV.

10. This grossly inappropriate dose was either ordered negligently and not properly reviewed, or was intentionally prescribed by Defendant Husel for the purposes of hastening the termination of Janet Kavanaugh's life.

11. Despite the grossly excessive and inappropriate order of Fentanyl, Mount Carmel's electronic medical records system failed to flag and alert Janet Kavanaugh's medical providers that such an order appeared to be in error. Alternatively, this excessive dose of Fentanyl was flagged and/or alerted by the system as inappropriate, but Defendants ignored the alerts because the order was intended to hasten the termination of Janet Kavanaugh's life.

12. Defendant Husel's order of a grossly excessive and inappropriate dosage of Fentanyl was reviewed and approved by Mount Carmel's pharmacist - Defendant Schroyer - and the medication was made available to Defendant Rudman, Janet's nurse.

13. Defendant Schroyer knew that the ordered dosage of Fentanyl was grossly inappropriate, served no therapeutic purpose or function, and would only serve to hasten the termination of Janet Kavanaugh's life.

14. Defendant Rudman, administered the lethal dosage at 5:45 AM on December 11, 2017, with full knowledge that such a grossly inappropriate dose of Fentanyl would hasten the termination of Janet Kavanaugh's life.

15. Janet Kavanaugh was pronounced dead at 6:03 AM on December 11, 2017, just minutes after receiving the lethal dose of Fentanyl.

16. On December 28, 2018, Plaintiff received a call from a physician-administrator affiliated with Mount Carmel. That administrator informed Plaintiff that her mother, Janet Kavanaugh, was given an excessive dosage of Fentanyl by Defendants which hastened and/or caused Janet's premature death.

17. The administrator further informed Plaintiff that all individuals involved in the provision of the excessive dosage of Fentanyl were suspended from patient care by Mount Carmel, as a result of, *inter alia*, the actions taken with regard to Janet Kavanaugh.

18. Plaintiff received yet another call from Mount Carmel administration on January 14, 2019 informing her that the actions described herein are not an isolated event, but rather, a repeated course of conduct by Defendants with respect to at least 26

patients at Mount Carmel. Further, multiple physicians, nurses, and pharmacists have been fired based on this conduct.

19. As to the medical claims included herein, an Affidavit of Merit is attached hereto as Exhibit 1, and incorporated herein as contemplated by Civ.R. 10(D)(2).

PLAINTIFF'S CLAIMS FOR RELIEF AGAINST DEFENDANTS

Count I: Battery (Survivorship)

20. Defendants, individually or by and through agents or employees, intentionally ordered and administered a grossly inappropriate and lethal dosage of the narcotic, Fentanyl, designed to cause serious harm and death to Janet Kavanaugh, on December 11, 2017.

21. The administration of a lethal dose of Fentanyl to Janet Kavanaugh was harmful and offensive.

22. Janet Kavanaugh did not consent to receiving a lethal dose of Fentanyl from Defendants.

23. Defendants' administration of the lethal dose of Fentanyl to Janet Kavanaugh exhibited a reckless disregard for Janet's health and safety.

24. As a direct and proximate result of the conduct of Defendants, Janet Kavanaugh suffered significant harm and death.

Count II: Medical Negligence (Survivorship)

25. Defendants, individually and/or vicariously by and through agents or employees, were professionally negligent and fell below the accepted standards of care in that they failed to exercise the degree of care required under similar circumstances

by, *inter alia*, prescribing, providing, and administering a grossly inappropriate and lethal dosage of Fentanyl to Janet Kavanaugh.

26. As a direct and proximate result of the negligence of Defendants, Janet Kavanaugh suffered severe and permanent injuries resulting from the lethal dosage of Fentanyl she was given, including a loss of life expectancy.

Count III: Negligence (Survivorship)

27. Defendant Schroyer owed a duty of reasonable care to Janet Kavanaugh in the services he provided as a registered pharmacist. Defendant Schroyer was negligent and breached that duty.

28. As a direct and proximate result of the negligence of Defendant Schroyer, Janet Kavanaugh suffered severe and permanent injuries resulting from the grossly inappropriate and lethal dosage of Fentanyl she was given, including a loss of life expectancy.

Count IV: Intentional Infliction of Emotional Distress

29. In taking the actions described herein, Defendants, either individually or by and through actual or ostensible agents and/or employees, intended to cause serious emotional harm to Janet Kavanaugh and her next of kin, or knew their actions would necessarily result in such emotional harm.

30. Defendants, either individually or by and through actual or ostensible agents and/or employees engaged in extreme and outrageous conduct as described herein.

31. As a direct and proximate result of the intentional conduct of Defendants, Janet Kavanaugh suffered severe and permanent injuries, including a loss of life expectancy and a wrongful death.

32. As a direct and proximate result of the intentional conduct of Defendants, and the injuries and wrongful death of Janet Kavanaugh, Plaintiff's beneficiaries

Count V: Wrongful Death

33. As a direct and proximate result of the intentional acts or omissions, negligence, and/or professional negligence of Defendants as set forth above, Janet Kavanaugh suffered a wrongful death on December 11, 2017.

34. As a further direct and proximate result of the negligence and/or professional negligence of the Defendants and the wrongful death of Janet Kavanaugh, her next of kin have suffered mental anguish as well as pecuniary and non-pecuniary losses, including, but not limited to, loss of society, support, services, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, and education, and any other items specified in R.C. 2125.02(B).

35. As a further direct and proximate result of the negligence and/or professional negligence of Defendants and the wrongful death of Janet Kavanaugh, the Estate has incurred reasonable burial and funeral expenses.

PLAINTIFF'S CLAIMS FOR RELIEF AGAINST MOUNT CARMEL

Count VI: Negligent Credentialing

36. Mount Carmel granted privileges to Defendant Husel, when he was inadequately trained and incompetent to perform critical care and anesthesia services.

37. Defendant Husel was negligent in his treatment of Janet Kavanaugh, and as a direct and proximate result of that negligence, she suffered injuries and a wrongful death.

38. In addition to his negligence in treating Janet Kavanaugh, Defendant Husel, on information and belief, is alleged to have been negligent in providing care to additional patients under similar circumstances to those presented in this case.

39. Mount Carmel had a duty to evaluate and determine the ability and competency of Defendant Husel to care for patients commensurate with his licensure and within the applicable standard of care.

40. Mount Carmel, by and through their employees, agents, and staff physician committees, was negligent in selecting or retaining Defendant Husel and/or in granting him staff privileges.

41. Mount Carmel continued to allow, and/or failed to revoke Defendant Husel's privileges at its facilities when it knew or should have known of Defendant Husel's incompetence and/or history of practicing medicine so as to fall below the applicable standard of care.

42. Mount Carmel failed to adequately review and evaluate Defendant Husel's education, character, fitness to practice osteopathic medicine, and his past performance as a specialist.

43. Mount Carmel ignored or failed to investigate the care and treatment provided by Defendant Husel to other patients, including failing to investigate patient complaints and/or other evidence of Defendant Husel's incompetence.

44. Mount Carmel committed other acts or omissions constituting the tort of negligent credentialing, which may be determined during the discovery process or trial.

45. But for the negligence of Mount Carmel, Defendant Husel would not have been granted staff privileges to care for critical care patients at its facilities.

46. But for the negligence of Mount Carmel in selecting and/or retaining Defendant Husel, he would not have been granted staff privileges, and Janet Kavanaugh would not have suffered the above described injuries and damages.

Count VII: Negligent Supervision

47. On information and belief, Defendants Husel, Schroyer, and Rudman were employees of Mount Carmel at all times relevant, acting within the scope of their employment when they provided care and treatment to Janet Kavanaugh, including the ordering, approval, and administration of the grossly inappropriate and lethal dose of Fentanyl.

48. Defendants Husel, Schroyer, and Rudman were not competent to care for patients in the manner in which they engaged while employees of Mount Carmel.

49. Mount Carmel was aware either actually, or constructively, of the incompetence of Defendants Husel, Schroyer, and Rudman.

50. The actions of Defendants Husel, Schroyer, and Rudman, as set forth herein, caused significant and permanent injury to Janet Kavanaugh, including her wrongful death, all of which resulted in damages to Plaintiff and the next of kin.

51. Mount Carmel's negligence in supervising its employees, Defendants Husel, Schroyer, and Rudman, was a direct and proximate cause of the harm suffered by Janet Kavanaugh and Plaintiff.

PUNITIVE DAMAGES

52. The conduct of Defendants could only result from Mount Carmel's systemic deficiencies and practices, which Mount Carmel failed to remedy, and which resulted in significant harm to at least 26 patients, including Janet Kavanaugh.

53. Defendants' engaged in willful, wanton, and reckless misconduct and malice, exhibiting a reckless disregard for the health and safety of their patients, including Janet Kavanaugh, and created a great probability of causing substantial harm.

54. As a direct and proximate result of Defendants' egregious misconduct, Janet Kavanaugh suffered injury and a wrongful death, as set forth above.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, in an amount in excess of \$25,000.00, plus interest, the costs of this action, and any other relief this Court deems just and equitable, including punitive damages for the intentional, egregious, and reckless misconduct of Defendants.

Respectfully submitted,

/s/ Gerald S. Leeseberg
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 Anne M. Valentine (0028286)
 Craig S. Tuttle (0086251)
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JURY DEMAND

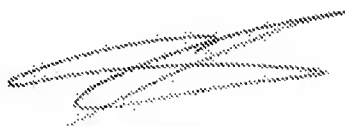
Plaintiff hereby respectfully demands a jury of eight as to all issues contained
herein.

/s/ Gerald S. Leeseberg
Gerald S. Leeseberg

AFFIDAVIT OF MERIT

Steven B. Bird, M.D., being first duly sworn, states the following to be true:

1. I submit this Affidavit of Merit in accordance with Ohio Civil Rule 10(D)(2)(a).
2. I am licensed to practice medicine by the Massachusetts Board of Registration in Medicine and am board certified in Emergency Medicine and Toxicology.
3. I devote at least one-half of my professional time to the active clinical practice of medicine, or to its instruction in an accredited school.
4. I have reviewed all medical records reasonably available to Plaintiff concerning the allegations contained in the Complaint.
5. I am familiar with the applicable standards of care in this case.
6. In my opinion, the standard of care was breached by Defendants and such breaches were a direct and proximate cause of injuries and death to Janet Kavanaugh.



STEVEN B. BIRD, M.D.

Sworn to and subscribed before me on January 11th, 2019.



NOTARY PUBLIC

